



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

November 13, 1990

Honorable George Pierce  
Chairman  
Urban Affairs  
Texas House of Representatives  
P. O. Box 2910  
Austin, Texas 78768-2910

LO-90-90

Dear Representative Pierce:

Local Government Code section 43.056 requires that in annexing new territory a city prepare a "service plan" providing for extension of municipal services to the territory to be annexed. Attorney General Opinion JM-944 (1988) concluded that, though injunctive or other relief might be had if a service plan was not adopted in compliance with legal requirements, the sole remedy available to aggrieved parties if the city did not in fact provide services in accordance with the service plan was disannexation under section 43.141 of the code.

After the issuance of Attorney General Opinion JM-944, the legislature amended section 43.056. Acts 1989, 71st Leg., ch. 822, at 3770. You ask whether the amendments to section 43.056 "increase the obligations upon a city beyond those outlined in Opinion JM-944, and if so to what extent."

You say that section 43.056 now "sounds in mandatory terms." Apparently you are referring to language such as that in new section (c) providing: "If the municipality owns a water and wastewater utility, the municipality shall, subject to this section, extend water and wastewater service to any annexed area not within the service area of another water or wastewater utility." But as Attorney General Opinion JM-944 noted:

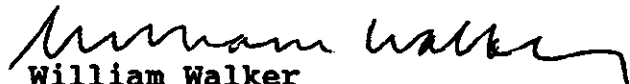
[D]espite the language . . . of section 43.056, to the effect that the municipality "shall" provide services, it would appear in light of Larkins that the exclusive remedy for the city's not providing such services in accordance with the service plan is

disannexation under current section 43.141 of  
the Local Government Code. (Emphasis added.)

See Larkins v. City of Denison, 683 S.W.2d 754 (Tex. Civ.  
App. - Dallas 1984, no writ).

In other words, this office reached the conclusion in  
Attorney General Opinion JM-944 despite the mandatory lan-  
guage, not because section 43.056 lacked mandatory language.  
Consequently, we do not construe the 1989 amendment to  
section 43.056 as affecting the conclusion of Attorney  
General Opinion JM-944.

Very truly yours,



William Walker  
Assistant Attorney General  
Opinion Committee

APPROVED: Rick Gilpin, Chairman  
Opinion Committee

Sarah Woelk, Chief  
Letter Opinion Section

RG/SW/WW/mc

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